

STATE OF MICHIGAN
COURT OF APPEALS

MARCELLA WEAVER, Personal Representative
of the Estate of DENNIS WEAVER, Deceased

Plaintiff-Appellee,

v

CITY OF DETROIT, a municipal corporation

Defendant-Appellant.

FOR PUBLICATION
July 16, 2002
9:10 a.m.

No. 218514
Wayne Circuit Court
LC No. 96-644363

Updated Copy
September 13, 2002

Before: Whitbeck, C.J., and Hood, Cavanagh, Saad, Wilder, Owens, and Cooper, JJ.

PER CURIAM.

We convened a special panel¹ to resolve the conflict between *Weaver v Detroit*, 249 Mich App 801 (2002), vacated 249 Mich App 801 (2002) (hereafter *Weaver I*), and *Ridley v Detroit (On Remand)*, 246 Mich App 687; 639 NW2d 258 (2001). We examine here whether a municipality is liable in tort for an alleged negligent maintenance of a streetlight pole, under the highway exception² to governmental immunity. The panel in *Weaver I* would have answered "no" to this question had it not been bound by the prior holding in *Ridley (On Remand)*. We find that the panel in *Weaver I* was correct and hold both that a streetlight pole is not implicated in the definition of the term "highway" found in MCL 691.1401(e) and that the highway exception to governmental immunity does not apply here. Accordingly, we reverse the judgment entered by the trial court against defendant based on the jury verdict and remand this case to the trial court for entry of a judgment of no cause of action in favor of defendant.

I. Facts and Proceedings

The following summary of the facts and proceedings is adopted from our Court's opinion in *Weaver I*, *supra* at 801-805:

¹ Pursuant to MCR 7.215(I)(1).

² MCL 691.1402.

Defendant city of Detroit appeals by right the trial court's order entered upon a jury verdict that found defendant liable for the wrongful death of Dennis Weaver and that awarded plaintiff Marcella Weaver, the decedent's personal representative, \$2 million in damages plus interest. . . .

This case arises from an accident that occurred when a bus struck a light pole, and the light pole fell on Dennis Weaver and killed him. Plaintiff's theory of the case was that because of defendant's failure to inspect and repair the light pole, the pole corroded so seriously that when the bus merely bumped or rubbed it, it fractured and broke. Testimony presented at trial established that the rusty light pole, erected in 1970 and last inspected in 1979, was placed eighteen inches from the highway's curb, which was in accordance with industry standards, and was owned and maintained by defendant city.

Defendant city asserts that it is immune from tort liability in this case because the highway exception to governmental immunity is inapplicable in this case. . . .

* * *

. . . Defendant . . . asserts that the light pole at issue was a utility pole; consequently, defendant is not liable under the highway exception to governmental immunity. But in the recent case of *Ridley (On Remand)*, *supra* at 691-692, a majority of this Court explicitly concluded that a light pole is *not* a utility pole, so it is not excluded by definition from the highway exception of governmental immunity and an action may be maintained. This Court's decision in *Ridley (On Remand)* followed the Supreme Court's remand⁵ of this Court's first decision in *Ridley v Detroit*, 231 Mich App 381; 590 NW2d 69 (1998) (hereinafter "*Ridley I*"), for reconsideration in light of *Evens v Shiawassee Co Rd Comm'rs*, 463 Mich 143; 615 NW2d 702 (2000), the companion case of *Nawrocki [v Macomb Co Rd Comm]*.

In *Ridley I*, *supra* at 383, a group of men attacked and beat the plaintiff's decedent. After the beating, an automobile struck the decedent when he tried to stand. *Id.* After the first automobile knocked him down, a second vehicle struck and killed him. *Id.* On the night and on the street where the decedent was killed, the streetlights were not functioning and had not been for some time. *Id.* at 383-384. The trial court found that the defendant, city of Detroit, was liable because it had been negligent in failing to provide street lighting and awarded plaintiff damages. *Id.* at 384. This Court affirmed the trial court's entry of judgment in favor of the plaintiff and rejected the defendant city's argument that the plaintiff's claim was barred by governmental immunity. *Id.* at 383, 384.

⁵ *Ridley v Detroit*, 463 Mich 932 (2000).

II. Standard of Review

Because this case involves a question of statutory interpretation, our review is de novo. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). We must give effect to each word in the statute, according to its plain and ordinary meaning. *Id.* at 683-684. Additionally, we should avoid construing the statute in a manner that renders any part of it surplusage or nugatory. *Id.* at 684.

III. Analysis

A. Governmental Immunity with Regard to Municipalities

Recently, in *Pohutski, supra*, our Supreme Court reviewed the development of governmental immunity in our state and noted the important historical distinction between "sovereign immunity," which applies only to state government, and "governmental immunity," which initially through judicial construction was applied to "inferior" divisions of government, including municipalities. *Id.* at 682. In *Williams v Detroit*, 364 Mich 231, 250; 111 NW2d 1 (1961), however, the Michigan Supreme Court abolished the common-law doctrine of governmental immunity as applied to municipalities. *Pohutski, supra* 682-683. Partly in reaction to the *Williams* decision, the Legislature enacted the governmental tort liability act in 1964 with the intention of providing "uniform liability and immunity to both state and local governmental agencies' when involved in a governmental function." *Id.* at 683, quoting *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 614; 363 NW2d 641 (1984).

As enacted, the act grants immunity from tort liability to governmental agencies involved in exercising or discharging governmental functions. MCL 691.1407(1). The definition of "governmental agency" includes municipal corporations such as defendant city of Detroit. *Weakley v Dearborn Heights (On Remand)*, 246 Mich App 322, 325; 632 NW2d 177 (2001); *Cox v Dearborn Heights*, 210 Mich App 389, 392; 534 NW2d 135 (1995). At the time of the accident in this case, a "governmental function" was defined as an activity that is "expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law."³ MCL 691.1401(f). Here, there is no dispute that erecting and maintaining the streetlight pole constituted a governmental function.

B. Extent of Immunity

The immunity granted under MCL 691.1407 is expressed in the "broadest possible language" *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156; 615 NW2d 702 (2000). However, it is subject to certain statutory exceptions, including the highway exception, MCL

³ The Legislature subsequently amended the definition of "governmental function" in 1999 PA 205, effective December 21, 1999, and in 2001 PA 131, effective October 15, 2001. However, these amendments do not affect our analysis.

691.1402. *Pusakulich v Ironwood*, 247 Mich App 80, 83; 635 NW2d 323 (2001). Pursuant to this exception, a governmental agency is not immune from tort liability that results from its failure to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1).

C. Inapplicability of the Highway Exception

The Court in *Ridley (On Remand)* reaffirmed its previous determination that, because a streetlight was not a utility pole and not otherwise specifically excluded from the definition of "highway," the highway exception to governmental immunity applied and the defendant city could be held responsible for failing to maintain a streetlight. *Ridley (On Remand)*, *supra* at 690-692. Moreover, the *Ridley (On Remand)* Court held that *Nawrocki* and its companion case, *Evens v Shiawassee Co Rd Comm'rs*, were not controlling for two reasons: (1) *Nawrocki* and *Evens* both involved claims against county road commissions, but the defendant in *Ridley* was a municipality and (2) the Supreme Court did not address in *Nawrocki* and *Evens* whether a streetlight is a utility pole. *Ridley (On Remand)*, *supra* at 691-692.

We find these distinctions to be insignificant when the facts of this case are analyzed in a manner consistent with the central theme of the Supreme Court's decision in *Nawrocki*. Critical to the Court's analysis in *Nawrocki* is the basic principle that "the immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed." *Nawrocki*, *supra* at 158. Consistent with this basic principle, "[n]o action may be maintained under the highway exception unless it is clearly within the scope and meaning of [MCL 691.1402(1)]." *Weakley*, *supra* at 326.

Applying these principles, we conclude that the highway exception to governmental immunity does not apply here because a streetlight pole is not part of the "highway." At the time of the accident, MCL 691.1401(e), in part, defined "highway" to mean "every public highway, road, and street which is open for public travel and shall include bridges, sidewalks, crosswalks, and culverts on any highway."⁴ We agree with the *Weaver I* panel and hold that, as with traffic signals and signs, see *Nawrocki*, *supra* at 180, 182 & n 37, the plain language of the statute does not support the conclusion that streetlight poles are included within the definition of the term "highway." *Weaver I*, *supra* at 804. Accordingly, we reject as inconsistent with the plain language of the statute the holding in *Ridley (On Remand)* that a streetlight pole is part of the "highway" because it is not specifically excluded from the definition of "highway" in MCL 691.1401(e). The Court in *Ridley (On Remand)* also concluded that the highway exception to governmental immunity applies to cases involving negligent failure to provide street lighting because a streetlight pole is not a utility pole as provided in MCL 691.1401(e). However,

⁴ The definition of "highway" was subsequently amended by 1999 PA 205, effective December 21, 1999. However, this amendment does not alter our analysis.

because a streetlight pole is not included in the definition of "highway," we need not and do not decide whether the Court in *Ridley (On Remand)* correctly decided this question.

IV. Conclusion

For the foregoing reasons, we agree with the Court in *Weaver I* that a streetlight pole is not part of the highway as defined in MCL 691.1401(e) and that *Ridley (On Remand)* was wrongly decided. Accordingly, we reverse the trial court's order of judgment in favor of plaintiff consistent with the jury verdict, and remand this case to the trial court for entry of a judgment of no cause of action in favor of defendant. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Harold Hood
/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Kurtis T. Wilder
/s/ Donald S. Owens
/s/ Jessica R. Cooper